

SENATE BILL REPORT

SB 5908

As Reported by Senate Committee On:
Early Learning & K-12 Education, February 19, 2015

Title: An act relating to restraint or isolation of students, including students with disabilities, in public schools.

Brief Description: Concerning restraint or isolation of students, including students with disabilities, in public schools.

Sponsors: Senators McAuliffe, Chase, Cleveland, Billig, Kohl-Welles, Habib and Hasegawa.

Brief History:

Committee Activity: Early Learning & K-12 Education: 2/16/15, 2/19/15 [DPS-WM].

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 5908 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Litzow, Chair; Dammeier, Vice Chair; McAuliffe, Ranking Member; Billig, Fain, Hill, Mullet, Rivers and Rolfes.

Staff: Ailey Kato (786-7434)

Background: Special Education. Federal law requires each school district to provide special education for students who need it due to a disability. Under federal law an Individualized Education Program (IEP) or a section 504 plan guides the delivery of the special education supports and services designed to meet the child's unique needs.

Aversive Interventions. Current law requires the Superintendent of Public Instruction to establish criteria for the use of aversive interventions for children who receive special education due to a disability. Office of Superintendent of Public Instruction (OSPI) rules provide that aversive interventions mean the use of isolation or restraint practices for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior that poses one of the following dangers:

- a clear and present danger of serious harm to the student or another person;
- a clear and present danger of serious harm to property; or
- a clear and present danger of seriously disrupting the educational process.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Definitions. Current law that places limits on the restraint or isolation of students who have an IEP or section 504 plan includes the following definitions:

- Isolation means excluding a student from the student's regular instructional area and restricting the student alone within a room or any other form of enclosure, from which the student may not leave;
- Restraint means physical intervention or force used to control a student, including the use of a restraint device; and
- Restraint device means a device used to assist in controlling a student, including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons.

Use of Restraint or Isolation. Current law states that it is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. The physical discipline of a child is allowed when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. The following actions are presumed unreasonable when used to correct or restrain a child:

- throwing, kicking, burning, or cutting a child;
- striking a child with a closed fist;
- shaking a child under age three;
- interfering with a child's breathing;
- threatening a child with a deadly weapon; or
- doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.

Current law places certain limits on the restraint or isolation of students who have an IEP or section 504 plan and who are participating in school-sponsored instruction or activities.

Follow-Up Procedures. For students who have an IEP or section 504 plan, the school must implement follow-up procedures following the release of a student from the use of restraint or isolation. These procedures must include the following:

- reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation, and
- reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed.

For students who have an IEP or section 504 plan, any school employee, resource officer, or school security officer who uses any chemical spray, mechanical restraint, or physical force on a student during school-sponsored instruction or activities must (1) inform the building administrator as soon as possible and (2) submit a written report with specific information about the incident to the district office.

Washington State School Directors' Association (WSSDA). This state agency is comprised of all 1477 school board members from Washington's 295 public school districts. WSSDA provides materials and educational services to its members, including model policies and procedures.

Summary of Bill (Recommended Substitute): Aversive Interventions. Instead of OSPI establishing criteria for the use of aversive interventions for students with disabilities, OSPI must establish criteria for the use of positive behavior interventions.

Definitions. The following changes are made to the definitions in current law that places limits on the restraint or isolation of students who have an IEP or section 504 plan:

- The definition of isolation removes excluding a student from the student's regular instructional area. Isolation does not include a student's voluntary use of a quiet space for self-calming;
- The definition of restraint specifies that a restraint device restricts a student's freedom of movement; and
- The definition of restraint device states that it does not mean a seat harness used to safely transport students. It also states that it should not be construed as encouraging the use of these devices.

Restraint and Isolation. The provisions regarding restraint and isolation of students who have IEPs or section 504 plans are made applicable to all students.

Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm as defined by law regarding integrated crisis response and involuntary treatment. Imminent means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. Likelihood of serious harm means a substantial risk that:

- physical harm will be inflicted by a person upon himself or herself, by a person upon another, or by a person upon the property of others; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Restraint or isolation must be closely monitored to prevent harm to the student and must be discontinued as soon as the likelihood of serious harm has dissipated.

School District Policy. Each school district must adopt a policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances.

IEPs and Section 504 Plans. An IEP or section 504 plan must not include the use of restraint or isolation as a planned behavior intervention but may refer to the district policy. Nothing is intended to limit the provision of a free appropriate public education under federal law.

Follow-Up Procedures. The procedures following the use of restraint or isolation must include reviewing the appropriateness of the response with the student and the parent or guardian. It must also include discussion with the staff member who administered the restraint or isolation about what training or support the staff member needs to help the student avoid similar incidents.

Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities should include in the written report any recommendations for changing the nature or amount of resources available

to the student and staff members in order to avoid similar incidents. The use of chemical spray, mechanical restraint, or physical force is removed. Technical changes are made.

Written Reports. Beginning January 1, 2016, and by January 1 annually thereafter, each school district must summarize the written reports regarding the use of isolation or restraint and submit the summaries to OSPI. For each school, the school district must include the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used.

No later than 90 days after receipt, OSPI must publish to its website the data received by the school districts. OSPI may use this data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation.

WSSDA Model Policy. WSSDA must adopt a model policy limiting restraint or isolation. By 180 days after the effective date of the law, WSSDA must distribute the model policy to the school districts, with encouragement to adopt the model policy locally.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended Substitute): The definition of restraint is modified to include the use of a restraint device to restrict a student's freedom of movement. A provision is added to the definition of restraint device that states that restraint device does not mean a seat harness used to safely transport students. A provision is added that states an IEP or section 504 plan may refer to the district policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances. A provision is added that nothing in the section that prohibits the use of restraint or isolation as a planned behavior intervention is intended to limit the provision of a free appropriate public education under federal law. Unpredicted is removed from the provision describing when restraint or isolation of a student is permitted. A provision is added that states restraint or isolation must be closely monitored to prevent harm to the student and must be discontinued as soon as the likelihood of serious harm has dissipated. A requirement is added that each school district must summarize reports of restraint or isolation and submit the summaries to OSPI by January 1 each year. For each school, the school district must include the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used. OSPI must publish to its website the data received by the districts within 90 days of receipt of the summaries. OSPI may use this data to investigate efforts used by schools and districts to reduce the use of restraint or isolation. The requirement that WSSDA consult with various stakeholders when developing the model policy is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Aversive interventions escalate the behavior. When students are restrained or isolated, students do not want to go to school. When students see students with disabilities being restrained or isolated, it sends a message that students with disabilities could harm them. Using positive behavior interventions instead of aversive interventions is effective.

CON: This bill does not go far enough. It should be modified so that isolation is never used because there is no benefit and it causes long-term damage. Restraint should only be used when there are deadly weapons.

OTHER: School districts may be prevented from developing protocols for students that could potentially cause serious harm. This concern is addressed by removing the word unpredicted from the standard of when restraint or isolation is allowed. It is also addressed by allowing IEPs and section 504 plans to refer to school district policies regarding restraint or isolation. School districts may feel compelled to limit the opportunities of some students with the most significant behavioral challenges to attend school in the least restrictive environment and fully participate in school activities. This bill could prevent schools from providing free appropriate public education (FAPE). This concern could be addressed by stating that nothing in this bill is intended to limit FAPE. This bill requires WSSDA to consult with various stakeholders when creating the model policy in a short amount of time. WSSDA does not currently have the resources to facilitate this type of consultation.

Persons Testifying: PRO: Arzu Forough, parent, WA Autism Alliance and Advocacy; Noah Seidel, Self Advocates in Leadership; Diana Stadden, The Arc of WA State.

CON: Judith da Silva, citizen.

OTHER: Dierk Meierbachtol, OSPI; Deb Merle, WSSDA.